

SENATE BILL NO. 84

INTRODUCED BY B. MCCARTHY

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PENALTIES RELATING TO ENVIRONMENTAL LAWS; RAISING, AND IN SOME CASES AUTHORIZING, JUDICIAL AND ADMINISTRATIVE PENALTIES THAT MAY BE ASSESSED FOR VIOLATIONS OF THE MONTANA SOLID WASTE MANAGEMENT ACT, THE MOTOR VEHICLE RECYCLING LAWS, THE MONTANA MEGALANDFILL SITING ACT, THE MONTANA UNDERGROUND STORAGE TANK INSTALLER AND INSPECTOR LICENSING AND PERMITTING ACT, THE MONTANA MAJOR FACILITY SITING ACT, THE SANITATION IN SUBDIVISION LAWS, THE STRIP AND UNDERGROUND MINE SITING ACT, THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT, THE METAL MINE RECLAMATION LAWS, AND THE OPENCUT MINING ACT; AMENDING SECTIONS 75-10-227, 75-10-228, 75-10-540, 75-10-541, 75-10-542, 75-10-943, 75-11-218, 75-11-223, 75-20-408, 76-4-108, 76-4-109, 82-4-141, 82-4-254, 82-4-361, AND 82-4-441, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-10-227, MCA, is amended to read:

"75-10-227. Administrative enforcement. (1) When the department believes that a violation of part 1 or this part, a violation of a rule adopted under part 1 or this part, or a violation of a permit provision has occurred, it may serve written notice of the violation on the alleged violator or ~~his~~ the alleged violator's agent. The notice must specify the provision of law, rule, or permit alleged to be violated and the facts alleged to constitute a violation and may include an order ~~to take~~ requiring necessary corrective action within a reasonable period of time stated in the order and assessing an administrative penalty. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board

1 may prescribe the date by which the violation must cease and may prescribe time limits for particular
2 action. If, after a hearing, the board finds ~~no~~ that a violation has not occurred, it shall rescind the
3 department's order.

4 (3) Instead of issuing an order pursuant to subsection (1), the department may either:

5 (a) require the alleged violator to appear before the board for a hearing at a time and place
6 specified in the notice and answer the charges; or

7 (b) initiate action under part 1 or this part.

8 (4) This section does not prevent the board or department from making efforts to obtain voluntary
9 compliance through warning, conference, or any other appropriate means."
10

11 **Section 2.** Section 75-10-228, MCA, is amended to read:

12 **"75-10-228. Civil and administrative penalties.** (1) A person who violates ~~any~~ a provision of this
13 part, a rule adopted under this part, or a license provision is subject to a civil penalty not to exceed ~~\$1,000~~
14 \$5,000 for each violation. Each day of violation constitutes a separate violation.

15 (2) A person who violates a provision of part 1 or this part, a rule adopted under part 1 or this
16 part, or a permit provision is subject to an administrative penalty not to exceed \$1,000 for each violation.
17 Each day of violation constitutes a separate violation.

18 ~~(2)(3)~~ The department may institute and maintain in the name of the state ~~any~~ an enforcement
19 ~~proceedings~~ proceeding under this section and an administrative proceeding pursuant to 75-10-227. Upon
20 request of the department, the attorney general or the county attorney of the county where the violation
21 occurred shall petition the district court to impose, assess, and recover the civil penalty.

22 ~~(3)(4)~~ Fines and penalties collected for violations of this part must be deposited in the solid waste
23 management account provided for in 75-10-117."
24

25 **Section 3.** Section 75-10-540, MCA, is amended to read:

26 **"75-10-540. Administrative enforcement.** (1) When the department determines that a violation
27 of this part, a violation of a rule adopted under this part, or a violation of a license provision has occurred,
28 it may serve written notice of the violation on the alleged violator or the alleged violator's agent. The
29 notice must specify the law, rule, or license provision alleged to be violated and the facts alleged to
30 constitute a violation and may include an order ~~to take~~ requiring necessary corrective action within a

1 reasonable period of time and assessing an administrative penalty. The order becomes final 30 days after
2 the notice is served unless the person named requests, in writing, a hearing before the board. On receipt
3 of the request for a hearing, the board shall schedule a hearing. Service by mail is complete on the date
4 of mailing.

5 (2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it
6 shall either affirm or change the department's order. An order may prescribe the date by which the
7 violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds
8 that a violation has not occurred, it shall rescind the department's order.

9 (3) The department shall make efforts to obtain voluntary compliance through warning,
10 conference, or any other appropriate means before issuing an order pursuant to subsection (1)."

11

12 **Section 4.** Section 75-10-541, MCA, is amended to read:

13 **"75-10-541. Injunction -- ~~action~~ actions to collect civil ~~penalty~~ and administrative penalties --**
14 **authority of department of justice.** (1) The department may sue to enjoin the operation or maintenance of
15 a motor vehicle wrecking facility or graveyard either permanently or until compliance with this part, the
16 rules of the department, or an order issued pursuant to this part has been demonstrated.

17 (2) The department may assess an administrative penalty as provided in 75-10-540 and
18 75-10-542 or may sue in district court to collect a civil penalty as provided in 75-10-542.

19 (3) Upon request of the department, the attorney general or the county attorney of the county in
20 which a motor vehicle wrecking facility or graveyard is located may petition the district court to enjoin
21 further operation or maintenance of a motor vehicle wrecking facility or graveyard or to impose, assess,
22 and recover a civil penalty, as appropriate.

23 (4) The department of justice, through the attorney general or the county attorney of the county
24 in which a facility is located, may sue in district court to collect a civil penalty as provided in 75-10-542
25 for violations of 75-10-512 or 75-10-513(2) discovered during department of justice inspections."

26

27 **Section 5.** Section 75-10-542, MCA, is amended to read:

28 **"75-10-542. Penalties.** (1) A person who willfully violates this part, except 75-10-520, is guilty
29 of a misdemeanor and upon conviction shall be fined not to exceed \$250, imprisoned in the county jail for
30 a term not to exceed 30 days, or both.

(2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued as provided in this part ~~shall be~~ is subject to a civil penalty of not more than ~~\$50~~ \$5,000 for each violation. Each day ~~upon which a~~ of violation of this part or a rule or order ~~occurs~~ is a separate violation.

(3) A person who violates this part, a rule of the department, or a license provision is subject to an administrative penalty of not more than \$1,000 for each violation. Each day of violation is a separate violation."

Section 6. Section 75-10-943, MCA, is amended to read:

"75-10-943. Penalties for violation -- civil action by attorney general. (1) (a) A person who commences to construct or operate a megalandfill without obtaining a certificate required under 75-10-916 and a license required under 75-10-933, who constructs, operates, or maintains a facility other than in compliance with the certificate or violates any other provision of 75-10-901 through 75-10-945 or ~~any~~ a rule or an order adopted under 75-10-901 through 75-10-945, or who knowingly submits false information in ~~any~~ a report, long-range plan, or application required by 75-10-901 through 75-10-945 is liable for ~~a civil penalty~~ penalties as provided in subsection (2).

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of the first judicial district of Montana.

(2) A person who violates the provisions of subsection (1) is subject to penalties as follows:

(a) A person who knowingly violates the provisions of subsection (1) ~~shall be fined~~ is subject to a criminal penalty of not more than \$25,000 for each violation or ~~be imprisoned~~ imprisonment for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(b) A person who violates the provisions of subsection (1) is subject to a civil penalty of not more than \$10,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) A person who violates the provisions of subsection (1) is subject to an administrative penalty of not more than \$5,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(3) In addition to ~~any~~ a penalty provided in subsection (1) or (2), whenever the department determines that a person is violating or is about to violate ~~any of~~ the provisions of 75-10-901 through 75-10-945, it may refer the matter to the attorney general who may bring a civil action on behalf of the

1 state in the district court of the first judicial district of Montana for injunctive or other appropriate relief
2 against the violation and to enforce 75-10-901 through 75-10-945 or a certificate issued under
3 75-10-916. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order
4 must be granted without bond.

5 (4) The department shall also enforce 75-10-901 through 75-10-945 and may bring legal actions
6 to accomplish the enforcement through its own legal counsel.

7 (5) All fines and penalties collected must be deposited in the solid waste management account
8 for the use of the department in administering 75-10-901 through 75-10-945."
9

10 **NEW SECTION. Section 7. Administrative penalty order.** (1) If the department believes that a
11 violation has occurred, it may issue a notice of violation and administrative penalty order, which requires
12 the payment of a penalty consistent with the requirements of [section 8]. The penalty order must:

13 (a) state with reasonable specificity the provision of this part, rule, order, permit provision, or other
14 requirement alleged to have been violated;

15 (b) describe the facts alleged to constitute a violation; and

16 (c) notify the recipient of the opportunity to request a hearing before the board.

17 (2) The department shall serve a penalty order under this section personally or by certified mail
18 on the alleged violator or the alleged violator's agent. Service by mail is complete on the date of mailing.

19 (3) The department may vacate an order issued under this section if it determines that a violation
20 did not occur. The department may modify an order if it determines that modification is appropriate
21 because of new information or further consideration of the factors provided in [section 8(4)]. The
22 department may terminate an order if it determines that the order is no longer necessary.

23 (4) Action under this section does not bar enforcement of a regulatory act by injunction or other
24 appropriate remedy.

25 (5) A person who has been served with an order or a modification of an order under this section
26 may, within 30 days after service, request a hearing before the board. The request for hearing must state
27 the reason for the request. The filing of a request for hearing stays the order. The contested case
28 provisions of the Montana Administrative Procedure Act in Title 2, chapter 4, part 6, apply to a hearing
29 conducted under this section.

30 (6) If the person who has been served an order under this section does not file a request for

1 hearing pursuant to subsection (5), the department may file the order with the district court of any county.
2 Upon request of the department, which may be ex parte, the district court shall review and approve the
3 order unless defects appear on the face of the order. An approved order has all the force, effect, and
4 attributes of a docketed judgment, order, or decree of the district court, including but not limited to lien
5 effect and enforceability by supplemental proceedings.

6
7 **NEW SECTION. Section 8. Administrative penalty order -- calculation of penalty amount.** (1) An
8 administrative penalty order issued pursuant to [section 7] must require the payment of an administrative
9 penalty that is consistent with the requirements of this part. Each day of each violation constitutes a
10 separate violation.

11 (2) Except as provided in subsection (3), a penalty may not be assessed for a day of violation that
12 occurred more than 3 years prior to the issuance of an order by the department under [section 7].

13 (3) A penalty may be assessed for days of violation that occurred more than 3 years prior to the
14 issuance of an order by the department under [section 7] if before, during, or after the violation, the
15 violator took action or failed to take action with the intent to prevent the department from discovering the
16 violation.

17 (4) The amount of penalty to be assessed for a violation may not be more than the maximum
18 penalty prescribed by this part and must be derived considering:

19 (a) the nature of the violation, including the degree of harm to the public health, safety, or welfare
20 or the environment, and the importance of maintaining compliance to the integrity of the regulatory
21 scheme;

22 (b) the extent and duration of the violation;

23 (c) the economic benefit of noncompliance;

24 (d) the size of the violator and the violator's ability to pay;

25 (e) the violator's compliance history;

26 (f) the circumstances of the violation, including the violator's good faith efforts to comply and
27 degree of willfulness; and

28 (g) other matters that justice may require.

29
30 **Section 9.** Section 75-11-218, MCA, is amended to read:

1 **"75-11-218. Administrative enforcement.** (1) When the department believes that a person has
2 violated this part, a rule adopted under this part, or a permit provision, it may serve written notice of the
3 violation on the person or the person's agent. The notice must specify the alleged violation and the facts
4 that constitute the alleged violation. The notice may include an order to provide information pertaining to
5 the installation, closure, or inspection, ~~or~~ an order to take necessary corrective action within a reasonable
6 time as stated in the order, or an order assessing administrative penalties. Every notice and order must be
7 signed by the director of the department or the director's deputy and must be served personally or by
8 certified mail upon the person or the person's agent. The order becomes final unless, within 30 days after
9 the notice is served, the person requests in writing a hearing before the board. On receipt of the request,
10 the board shall schedule a hearing. Service by mail is complete on the date of mailing.

11 (2) If, pursuant to a hearing held under subsection (1), the board finds that a violation has
12 occurred, it shall either affirm or modify the department's order. An order issued by the department or the
13 board may prescribe the date by which the violation must cease and may prescribe time limits for particular
14 action. If, after a hearing, the board finds that a violation has not occurred, it shall rescind the
15 department's order.

16 (3) In addition to or instead of issuing an order pursuant to subsection (1), the department may
17 either:

18 (a) require the alleged violator to appear before the board for a hearing at a time and place
19 specified in the notice and answer the charges described in the notice of violation; or

20 (b) initiate action under 75-11-219, 75-11-223, or 75-11-224.

21 (4) This section does not prevent the board or department from attempting to obtain voluntary
22 compliance through issuance of a warning, a conference, or ~~any~~ other appropriate administrative or judicial
23 means."
24

25 **Section 10.** Section 75-11-223, MCA, is amended to read:

26 **"75-11-223. Civil and administrative penalties.** (1) ~~Any~~ A person who violates ~~any~~ a provision of
27 this part, a rule adopted under this part, or an order of the department or the board is subject to a civil
28 penalty not to exceed \$10,000 ~~per~~ for each violation. If an installer or an inspector who is an employee
29 is in violation, the employer of that installer or that inspector is the entity that is subject to the provisions
30 of this section unless the violation is the result of a grossly negligent or willful act. Each day of violation

of this part, a rule adopted under this part, or an order constitutes a separate violation.

(2) A person who violates a provision of this part, a rule adopted under this part, or a permit provision is subject to an administrative penalty not to exceed \$1,000 for each violation. Each day of violation constitutes a separate violation.

~~(2)(3)~~ The department may institute and maintain in the name of the state ~~any~~ an enforcement ~~proceedings~~ proceeding under this section. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

~~(3)(4)~~ Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy; or

(b) action under 75-11-224."

Section 11. Section 75-20-408, MCA, is amended to read:

"75-20-408. Penalties for violation of chapter -- civil action by attorney general. (1) (a) ~~Whoever~~ A person who commences to construct or operate a facility without first obtaining a certificate required under 75-20-201 or a waiver ~~thereof~~ of a certificate under 75-20-304(2) or having first obtained a certificate, who constructs, operates, or maintains a facility other than in compliance with the certificate, or who violates any other provision of this chapter or ~~any~~ a rule or an order adopted ~~thereunder~~ under this chapter or knowingly submits false information in ~~any~~ a report, 10-year plan, or application required by this chapter or rule or order adopted ~~thereunder~~ under this chapter or causes ~~any of the aforementioned~~ those acts to occur is ~~liable for~~ subject to a civil penalty of not more than \$10,000 for each violation.

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of the first judicial district of Montana.

(2) ~~Whoever~~ A person who knowingly and willfully violates subsection (1) shall be fined not more than \$10,000 for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) A person who violates subsection (1) is subject to an administrative penalty not to exceed \$5,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(3)(4) In addition to ~~any~~ a penalty provided in subsection (1), ~~(2)~~, or ~~(2)~~ (3), whenever the department determines that a person is violating or is about to violate ~~any of~~ the provisions of this section, it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to enforce this chapter or a certificate issued hereunder. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order ~~shall~~ must be granted without bond.

(4)(5) The department shall also enforce this chapter and bring legal actions to accomplish the enforcement through its own legal counsel.

(5)(6) All fines and penalties collected ~~shall~~ must be deposited in the state special revenue fund for the use of the department in administering this chapter."

Section 12. Section 76-4-108, MCA, is amended to read:

"76-4-108. Enforcement. (1) If the reviewing authority has reason to believe that a violation of this part or a rule made under it has occurred, it may have written notice served personally or by mail to the last-known address of the alleged violator or ~~his~~ the alleged violator's agent. The notice ~~shall~~ must state the provision alleged to be violated; and the facts alleged to constitute the violation; ~~the corrective action required by the reviewing authority, and the time within which the action is to be taken. The notice may include an order requiring necessary corrective action within a reasonable period of time stated in the order and assessing an administrative penalty.~~ For the purpose of this part, service by mail is complete on the date of mailing. The alleged violator may, no later than 30 days after service of a notice and order under this section, request a hearing before the reviewing authority or the board. If a request is filed, a hearing ~~shall~~ must be held within a reasonable time.

(2) In addition to or instead of issuing an order, the reviewing authority may initiate appropriate action to compel compliance with this part.

(3) The provisions of this part may be enforced by a reviewing authority other than the department or board only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately enforce the provisions of this part, the department or the board may compel compliance with this part under the provisions of this section.

(4) When a local reviewing authority exercises the authority delegated to it by this section, the local reviewing authority shall accept legal responsibility for its actions under this part.

(5) If a violation of this part is found to exist, a reviewing authority may revoke a certificate of approval and reimpose sanitary restrictions on a subdivision, following a hearing before the reviewing authority under this section."

Section 13. Section 76-4-109, MCA, is amended to read:

"76-4-109. Penalties. (1) A person violating ~~any~~ a provision of this part, except 76-4-122(1), or ~~any~~ a rule or an order issued under this part is guilty of an offense and subject to a fine of not to exceed \$1,000.

(2) In addition to the fine specified in subsection (1), a person who violates ~~any~~ a provision of this part or ~~any~~ a rule or an order issued under this part is subject to a civil penalty not to exceed ~~\$1,000~~ \$10,000 for each violation or an administrative penalty not to exceed \$5,000 for each violation. Each day of violation constitutes a separate violation.

(3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy.

(4) The purpose of this section is to provide additional and cumulative remedies."

Section 14. Section 82-4-141, MCA, is amended to read:

"82-4-141. Violation -- civil penalty. (1) A person or operator who violates ~~any~~ of the provisions of this part or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than ~~\$1,000~~ \$10,000 for the violation and an additional civil penalty of not less than \$100 or more than ~~\$1,000~~ \$10,000 for each day during which a violation continues and may be enjoined from continuing ~~such~~ the violations as provided in this section. These penalties ~~shall be~~ are recoverable in ~~any~~ an action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the director, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

(3) A person who willfully violates ~~any~~ of the provisions of this part or ~~any~~ a determination or

1 order adopted under this part ~~which~~ that has become final is guilty of a misdemeanor and shall be fined
2 not less than \$500 and not more than \$5,000. Each day ~~on which a~~ of violation ~~occurs~~ constitutes a
3 separate offense."

4

5 NEW SECTION. **Section 15. Violation -- administrative penalty.** The department may assess,
6 pursuant to [sections 7 and 8], an administrative penalty against any person or operator who violates the
7 provisions of this part or rules or orders adopted under this part. The administrative penalty must be in an
8 amount not to exceed \$5,000 for each violation. Each day of violation constitutes a separate violation.

9

10 **Section 16.** Section 82-4-254, MCA, is amended to read:

11 **"82-4-254. Violation -- administrative penalty -- criminal penalty -- injunctive relief -- waiver.** (1)
12 Except as provided in subsection (2), a person or operator who violates ~~any of~~ the provisions of this part,
13 rules or orders adopted under this part, or a term or condition of a permit and ~~any a~~ director, officer, or
14 agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay ~~a civil~~ an
15 administrative penalty of not less than \$100 or more than \$5,000 for the violation and an additional ~~civil~~
16 administrative penalty of not less than \$100 or more than \$5,000 for each day during which a violation
17 continues and may be enjoined from continuing the violations as provided in this section. ~~Any A~~ person
18 or operator who fails to correct a violation within the period permitted by law, rule of the board, or order
19 of the department shall be assessed ~~a~~ an administrative penalty of not less than \$750 for each day, up
20 to 30 days, during which the failure or violation continues. The period permitted for correction of a
21 violation does not, in the case of ~~any a~~ review proceeding under 82-4-251(6), end until entry of a final
22 order suspending the abatement requirements or until entry of an order of court ordering suspension of
23 the abatement requirements. If the failure to abate continues for more than 30 days, the department shall,
24 within 30 days after the 30-day period, take appropriate action pursuant to 82-4-251(3) or request action
25 under subsection (4) or (6) of this section.

26 (2) The department may waive the ~~civil~~ administrative penalty for a minor violation of this part,
27 a rule or order adopted under this part, or a term or condition of a permit if the department determines that
28 the violation is not of potential harm to public health, public safety, or the environment and does not impair
29 the administration of this part. The board shall adopt rules to implement and administer a procedure for
30 waiver of a penalty under this subsection.

1 (3) The department shall notify the person or operator of the violation. By filing a written request
2 within 20 days of receipt of the notice of violation, the person or operator is entitled to a hearing on the
3 issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is
4 proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of
5 violation. After the hearing or after the time for requesting a hearing has expired, the department shall
6 make findings of fact and shall issue a written decision as to the occurrence of the violation and the
7 amount of penalty warranted and shall order the payment of a penalty in that amount. The person or
8 operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes
9 to obtain judicial review of the assessment, the person or operator shall submit with the penalty a
10 statement that the penalty is being paid under protest and the department shall hold the payment in
11 escrow until judicial review is complete. ~~Any~~ A person or operator who fails to request and submit
12 testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under
13 protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the
14 violation or penalty determinations. These penalties are recoverable in ~~any~~ an action brought in the name
15 of the state of Montana by the attorney general in the district court of the first judicial district of this state,
16 in and for the county of Lewis and Clark, or the district having jurisdiction over the defendant.

17 (4) The attorney general shall, upon request of the director of environmental quality, sue for ~~the~~
18 recovery of the penalties provided for in this section and bring an action for a restraining order or a
19 temporary or permanent injunction against an operator or other person who:

20 (a) violates, threatens to violate, or fails or refuses to comply with ~~any~~ an order or decision issued
21 under this part;

22 (b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

23 (c) refuses to admit an authorized representative of the department to the permit area;

24 (d) refuses to permit inspection of the permit area by an authorized representative of the
25 department;

26 (e) refuses to furnish ~~any~~ information or a report requested by the department in furtherance of
27 the provisions of this part;

28 (f) refuses to permit access to and copying of records that the department determines to be
29 necessary in carrying out the provisions of this part.

30 (5) ~~Any relief~~ Relief granted by a court under subsection (4)(a) continues in effect until the

completion or final termination of all proceedings for review of relief granted under this part unless, prior to the final determination, the district court granting the relief sets it aside or modifies it.

(6) A person who violates ~~any of~~ the provisions of this part or ~~any a~~ determination or order adopted under this part or who willfully violates ~~any a~~ permit condition issued under this part is guilty of a misdemeanor and shall be fined not less than \$500 and not more than \$10,000 or imprisoned for not more than 1 year, or both. Each day ~~on which the of~~ violation ~~occurs~~ constitutes a separate offense.

(7) ~~Any A~~ person who knowingly makes ~~any a~~ false statement, representation, or certification or knowingly fails to make ~~any a~~ statement, representation, or certification in ~~any an~~ application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

(8) ~~Any A~~ person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

(9) An employee of the department performing ~~any a~~ function or duty under this part may not have a direct or indirect financial interest in ~~any a~~ strip- or underground-coal-mining operation. A person who knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than \$2,500 or by imprisonment of not more than 1 year, or both.

(10) The department may bring a judicial action for civil penalties under [section 17] in lieu of initiating an action for administrative penalties under this section."

NEW SECTION. Section 17. Action for civil penalties. The department may commence a judicial action seeking civil penalties for violations of this part. In an action seeking civil penalties, a person or operator who violates the provisions of this part, rules or orders adopted under this part, or a term or condition of a permit issued under this part and a director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation constitutes a separate violation.

Section 18. Section 82-4-361, MCA, is amended to read:

"82-4-361. Violation -- administrative penalties --~~waiver~~. (1) (a) The department may assess an

1 administrative ~~civil~~ penalty of not less than \$100 or more than ~~\$1,000~~ \$5,000 for each of the following
2 violations and an additional administrative ~~civil~~ penalty of not less than \$100 or more than ~~\$1,000~~ \$5,000
3 for each day during which the violation continues and the department may bring an action for an injunction
4 from continuing the violation against:

5 (i) a person or operator who violates a provision of this part, a rule or order adopted under this
6 part, or a term or condition of a permit; or

7 (ii) ~~any~~ a director, officer, or agent of a corporation who willfully authorizes, orders, or carries out
8 a violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a
9 permit.

10 (b) If the violation created an imminent danger to the health or safety of the public or caused
11 significant environmental harm, ~~the maximum penalty is~~ department may assess an administrative penalty
12 of not less than \$1,000 or more than \$5,000 for each day of violation.

13 (2) The department shall take into account the following factors in determining whether to ~~institute~~
14 ~~a civil penalty action~~ assess an administrative penalty and in determining the penalty amount:

15 (a) the nature, circumstances, extent, and gravity of the violation;

16 (b) the violator's prior history of violations;

17 (c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

18 (d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts
19 of the violation; and

20 (e) other matters that justice may require.

21 (3) The department may bring an action for a restraining order or a temporary or permanent
22 injunction against an operator or other person violating or threatening to violate an order adopted under
23 this part.

24 (4) The department shall notify the person or operator of the violation. The department shall issue
25 a statement of proposed penalty within 30 days after notice of the violation. The person or operator, by
26 filing a written request within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing
27 on the issues of whether the alleged violation has occurred and whether the penalty proposed to be
28 assessed is proper. After the hearing or after the time for requesting a hearing has expired, the department
29 shall make findings of fact and issue a written decision as to the occurrence of the violation and whether
30 the amount of penalty is warranted. The department shall order the payment of a penalty in that amount.

1 The person or operator shall remit the amount of the penalty or petition for judicial review within 30 days
2 of receipt of the order. A person or operator who fails to request the hearing provided for in this subsection
3 or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or
4 operator's right to seek judicial review of the violation or penalty determinations. These penalties are
5 recoverable in an action brought by the department.

6 (5) Legal actions for injunctive relief under this section must be brought in the district court of the
7 county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in any
8 other judicial district. Legal actions for review of penalty orders or for recovery of penalties must be
9 brought in the district court in the first judicial district, Lewis and Clark County.

10 (6) The department may bring a judicial action for civil penalties under [section 19] in lieu of
11 initiating an action for administrative penalties under this section."

12
13 **NEW SECTION.** **Section 19. Action for civil penalties.** The department may commence a judicial
14 action seeking civil penalties for violations of this part. In a judicial action, a person or operator who
15 violates the provisions of this part, a rule or order adopted under this part, or a term or condition of a
16 permit issued under this part is subject to a civil penalty not to exceed \$10,000 for each violation. Each
17 day of violation constitutes a separate violation.

18
19 **Section 20.** Section 82-4-441, MCA, is amended to read:

20 **"82-4-441. ~~Penalty~~ Administrative penalty -- enforcement.** (1) The department may assess against
21 a person who violates ~~any of~~ the provisions of this part, rules adopted under this part, or provisions of a
22 reclamation permit:

23 (a) ~~a civil~~ an administrative penalty of not less than \$100 or more than ~~\$1,000~~ \$5,000 for the
24 violation; and

25 (b) an additional ~~civil~~ administrative penalty of not less than \$100 or more than ~~\$1,000~~ \$5,000
26 for each day during which a violation continues following the service of notice of the violation.

27 (2) The department shall take into account the following factors in determining whether to ~~institute~~
28 ~~a civil penalty action~~ assess an administrative penalty and in determining the penalty amount:

29 (a) the nature, circumstances, extent, and gravity of the violation;

30 (b) the violator's prior history of violations;

1 (c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

2 (d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts
3 of the violation; and

4 (e) other matters that justice may require.

5 (3) The department shall notify the person or operator of the violation. The person or operator is
6 entitled, by filing a written request within 20 days of receipt of the notice of violation, to a hearing on the
7 issues of whether the alleged violation has occurred and whether the penalty proposed to be imposed is
8 proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of
9 violation. After the hearing or after the time for requesting a hearing has expired, the department shall
10 make findings of fact, issue a written decision as to the occurrence of the violation and the amount of
11 penalty warranted, and order the payment of a penalty in that amount. The person or operator shall remit
12 the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial
13 review of the assessment, the person or operator shall submit with the penalty a statement that the
14 penalty is being paid under protest and the department shall hold the payment in escrow until judicial
15 review is complete. A person or operator who fails to request and submit testimony at the hearing provided
16 for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order
17 assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations.
18 These penalties are recoverable in an action brought by the department in the district court of the first
19 judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county
20 in which the opencut mine is located.

21 (4) The department may bring an action to enjoin an operator or other person violating or
22 threatening to violate this part, rules adopted pursuant to this part, or a permit pursuant to this part in the
23 district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the
24 district court of the county in which the opencut mine is located.

25 (5) The department may bring a judicial action for civil penalties under [section 21] in lieu of
26 initiating an action for administrative penalties under this section."

27
28 NEW SECTION. Section 21. Action for civil penalties. The department may commence a judicial
29 action seeking civil penalties for violations of this part. In a judicial action, a person who violates the
30 provisions of this part, a rule adopted under this part, or a provision of a reclamation permit is subject to

1 a civil penalty not to exceed \$10,000 for each violation. Each day of violation constitutes a separate
2 violation.

3

4 NEW SECTION. Section 22. Codification instruction. (1) [Sections 7 and 8] are intended to be
5 codified as an integral part of 75-10-901 through 75-10-945; Title 75, chapter 20, part 4; and Title 82,
6 chapter 4, part 1; and the provisions of 75-10-901 through 75-10-945; Title 75, chapter 20, part 4; and
7 Title 82, chapter 4, part 1, apply to [sections 7 and 8].

8 (2) [Section 15] is intended to be codified as an integral part of Title 82, chapter 4, part 1, and
9 the provisions of Title 82, chapter 4, part 1, apply to [section 15].

10 (3) [Section 17] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and
11 the provisions of Title 82, chapter 4, part 2, apply to [section 17].

12 (4) [Section 19] is intended to be codified as an integral part of Title 82, chapter 4, part 3, and
13 the provisions of Title 82, chapter 4, part 3, apply to [section 19].

14 (5) [Section 21] is intended to be codified as an integral part of Title 82, chapter 4, part 4, and
15 the provisions of Title 82, chapter 4, part 4, apply to [section 21].

16

17 NEW SECTION. Section 23. Coordination instruction. (1) If __ Bill No. __ [LC 0353] and [this act]
18 are both passed and approved, then [sections 16 and 17] are void and [section 5(1)] of __ Bill No. __ [LC
19 0353] is amended to read:

20 "~~(1) Except as provided in subsection (2), a~~ A person or operator who violates ~~any of the provisions~~
21 of this part, rules or orders adopted under this part, or a term or condition of a permit and ~~any a~~ director,
22 officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay ~~a civil~~
23 an administrative penalty of not less than \$100 or more than \$5,000 for each day of the violation ~~and an~~
24 ~~additional or a civil~~ penalty of not less than \$100 or more than ~~\$5,000~~ \$10,000 for each day ~~during which~~
25 ~~a of the violation continues~~ and may be enjoined from continuing the violations as provided in this section.
26 ~~Any~~ A person or operator who fails to correct a violation within the period permitted by law, rule of the
27 board, or order of the department shall be assessed ~~a~~ an administrative or civil penalty of not less than
28 \$750 for each day, up to 30 days, during which the failure or violation continues. ~~The period permitted~~
29 ~~for correction of a violation does not, in the case of any review proceeding under 82-4-251(6), end until~~
30 ~~entry of a final order suspending the abatement requirements or until entry of an order of court ordering~~

1 ~~suspension of the abatement requirements. If the failure to abate continues for more than 30 days, the~~
2 ~~department shall, within 30 days after the 30-day period, take appropriate action pursuant to 82-4-251(3)~~
3 ~~or request action under subsection (4) or (6) of this section."~~

4 (2) If __ Bill No. __ [LC 0353] and [this act] are both passed and approved, then [sections 18 and
5 19] are void and [section 6(1)] of __ Bill No. __ [LC 0353] is amended to read:

6 "(1) (a) The department may ~~assess~~ initiate an action under [sections 3 and 4] or this section that
7 seeks an administrative civil penalty of not less than \$100 or more than \$1,000 \$5,000 for each day of
8 the following violations and an additional administrative or a civil penalty of not less than \$100 or more
9 than \$1,000 \$10,000 for each day during which the violation continues of the following violations, and
10 the department may bring an action for an injunction from continuing the violation against:

11 (i) a person or operator who violates a provision of this part, a rule or order adopted under this
12 part, or a term or condition of a permit; or

13 (ii) ~~any~~ a director, officer, or agent of a corporation who willfully authorizes, orders, or carries out
14 a violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a
15 permit.

16 (b) If the violation created an imminent danger to the health or safety of the public or caused
17 significant environmental harm, the ~~maximum~~ penalty is shall be an amount not less than \$1,000 or more
18 than \$5,000 for each day of violation."

19 (3) If __ Bill No. __ [LC 0353] and [this act] are both passed and approved, then [sections 20 and
20 21] are void and [section 7(1)] of __ Bill No. __ [LC 0353] is amended to read:

21 "(1) The department may ~~assess~~ initiate an action under [sections 3 and 4] or this section against
22 a person who violates ~~any~~ of the provisions of this part, rules adopted under this part, or provisions of a
23 reclamation permit:

24 (a) ~~a civil seeking an administrative~~ penalty of not less than \$100 or more than ~~\$1,000 for the~~
25 ~~violation; and~~ \$5,000 for each day during which a violation continues following the service of notice of
26 the violation; or

27 (b) ~~an additional seeking a~~ civil penalty of not less than \$100 or more than ~~\$1,000~~ \$10,000 for
28 each day during which a violation continues following the service of notice of the violation."

29
30 NEW SECTION. **Section 24. Saving clause.** [This act] does not affect rights and duties that

1 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
2 act].

3

4 NEW SECTION. **Section 25. Effective date.** [This act] is effective on passage and approval.

5 - END -